

REMARKS

Favorable reconsideration of this application is respectfully requested in view of the foregoing amendments and the following remarks.

Claims 1-11 have been canceled without prejudice or disclaimer of the subject matter contained therein. Claims 12-22 have been added. Thus, claims 12-22 are pending in the patent application, of which claims 12, 15, 18, and 19 are independent.

Noted – IDS considered

The indication (see attachments to the Office Actions mailed December 13, 2005, February 21, 2007, April 16, 2007 and October 22, 2007) that the Information Disclosure Statements (IDS) as filed on September 27, 2005, June 7, 2006, October 30, 2006, July 17, 2007 and September 4, 2007 and references listed therein have been considered is noted with application.

Claim Rejection Under 35 U.S.C. §103

Claims 1, 2, 6 and 8 are rejected under 35 U.S.C. §103(a) as being unpatentable over Reynolds in view of Furtney.

INDEPENDENT CLAIM 12

As an example, independent claim 12 recites (among other things) a feature of:

...

measuring performances of communication between the other communication device of different communication modes, under a plurality of different communication conditions respectively;

determining, as a threshold, a communication condition that a communication performance of one of the communication modes exceeds a communication performance of the other communication mode based on a result of the measurement; ...

As will be explained below, at least these features of claim 12 are a distinction over Reynolds, and thus over its combination with Furtney.

Reynolds in column 6, lines 40-47 recites "hardware characterization test may be run." However, Reynolds does not disclose further details about the test. Reynolds does not disclose

"determining, as a threshold, a communication condition that a communication performance of one of the communication modes exceeds a communication performance of the other communication mode based on a result of the measurement." Reynolds does not disclose *"measuring performances of communication between the other communication device of different communication modes, under a plurality of different communication conditions respectively."*

Reynolds in column 4, lines 18-21 recites "each particular operation requires communication among the nodes of the parallel processing system." However, Reynolds does not disclose *"measuring performances of communication between the other communication device of different communication modes, under a plurality of different communication conditions respectively."* Reynolds does not also disclose *"determining, as a threshold, a communication condition that a communication performance of one of the communication modes exceeds a communication performance of the other communication mode based on a result of the measurement."*

Reynolds in column 5, lines 11-46 does not disclose *"measuring performances of communication between the other communication device of different communication modes, under a plurality of different communication conditions respectively."* Reynolds in column 5, lines 11-46 does not also disclose *"determining, as a threshold, a communication condition that a communication performance of one of the communication modes exceeds a communication performance of the other communication mode based on a result of the measurement."*

Hence, the noted features of claim 12 are distinction over Reynolds. The noted features also are distinction over Furtney as evidenced, e.g., by the Office Action. That is, the Office Action does not assert Furtney as disclosing the noted features.

Claims 13-14 depend from Claim 12. A basis for how Reynolds is deficient vis-à-vis Claims 12 has been noted above. The Office Action does not rely upon Furtney to compensate for these deficiencies. Hence, the noted feature of Claims 12 also is a distinction over Furtney.

Among other things, a *prima facie* case of obviousness must established that the asserted combination of references teaches or suggested each and every element of the claimed invention. In view of the distinction of Claim 12 noted above, at least one claimed element is not present in the asserted combination of references. Hence, the Office Action fails to establish a *prima facie* case of obviousness vis-à-vis Claims 12. Claims 13-14 ultimately

depend from claim 12, and so at least similarly distinguish over the asserted combination of references.

Accordingly, withdrawal of the rejection is respectfully requested.

INDEPENDENT CLAIM 15

As an example, independent claim 15 recites (among other things) a feature of:

...

a unit that measures performances of a communication between the other communication devices in different communication modes, under different communication data sizes respectively, for each of the other communication devices;

a unit that determines, for each of the other communication devices a communication data size that a communication performance of a first communication mode exceeds a communication performance of a second communication mode ...

As will be explained below, at least these features of claim 15 are a distinction over Reynolds, and thus over its combination with Furtney.

Reynolds in column 6, lines 40-47 recites "hardware characterization test may be run." However, Reynolds does not disclose further details about the test. Reynolds does not disclose "a unit that determines, for each of the other communication devices, communication data size that a communication performance of a first communication mode exceeds a communication performance of a second communication mode." Reynolds does not disclose "a unit that measures performances of a communication between the other communication devices in different communication modes, under a different communication data sizes respectively, for each of the other communication devices."

Reynolds in column 4, lines 18-21 recites "each particular operation requires communication among the nodes of the parallel processing system." However, Reynolds does not disclose "a unit that measures performances of a communication between the other communication devices in different communication modes, under a different communication data sizes respectively, for each of the other communication devices." Reynolds does not also disclose "a unit that determines, for each of the other communication devices, a communication data size that a communication performance of a first communication mode exceeds a communication performance of a second communication mode."

Reynolds in column 5, lines 11-46 does not disclose “a unit that measures performances of a communication between the other communication devices in different communication modes, under different communication data sizes respectively, for each of the other communication devices.” Reynolds in column 5, lines 11-46 does not also disclose “a unit that determines, for each of the other communication devices, a communication data size that a communication performance of a first communication mode exceeds a communication performance of a second communication mode.”

Hence, the noted features of claim 15 are distinction over Reynolds. The noted features also are distinction over Furtney as evidenced, e.g., by the Office Action. That is, the Office Action does not assert Furtney as disclosing the noted features.

Claims 16-17 depend from Claim 15. A basis for how Reynolds is deficient vis-à-vis Claims 15 has been noted above. The Office Action does not rely upon Furtney to compensate for these deficiencies. Hence, the noted feature of Claims 15 also is a distinction over Furtney.

Among other things, a prima facie case of obviousness must established that the asserted combination of references teaches or suggested each and every element of the claimed invention. In view of the distinction of Claim 15 noted above, at least one claimed element is not present in the asserted combination of references. Hence, the Office Action fails to establish a prima facie case of obviousness vis-à-vis Claims 15. Claims 16-17 ultimately depend from claim 15, and so at least similarly distinguish over the asserted combination of references.

Accordingly, withdrawal of the rejection is respectfully requested.

INDEPENDENT CLAIM 18

As an example, independent claim 18 recites (among other things) a feature of:

...

measuring performances of communication between the other communication devices in different communication modes, under a plurality of different communication conditions respectively, for each of the other communication devices;

determining, for each of the other communication devices, a communication condition that a communication performance of one of the communication modes exceeds a communication performance of the other communication mode, for each other of the other communication devices ...

As will be explained below, at least these features of claim 18 are a distinction over Reynolds, and thus over its combination with Furtney.

Reynolds in column 6, lines 40-47 recites "hardware characterization test may be run." However, Reynolds does not disclose further details about the test. Reynolds does not disclose *"determining, for each of the other communication devices, a communication condition that a communication performance of one of the communication modes exceeds a communication performance of the other communication mode, for each other of the other communication devices."* Reynolds does not disclose *"measuring performances of communication between the other communication devices in different communication modes, under a plurality of different communication conditions respectively, for each of the other communication devices."*

Reynolds in column 4, lines 18-21 recites "each particular operation requires communication among the nodes of the parallel processing system." However, Reynolds does not disclose *"measuring performances of communication between the other communication devices in different communication modes, under a plurality of different communication conditions respectively, for each of the other communication devices."* Reynolds does not also disclose *"determining, for each of the other communication devices, a communication condition that a communication performance of one of the communication modes exceeds a communication performance of the other communication mode, for each other of the other communication devices."*

Reynolds in column 5, lines 11-46 does not disclose *"measuring performances of communication between the other communication devices in different communication modes, under a plurality of different communication conditions respectively, for each of the other communication devices."* Reynolds in column 5, lines 11-46 does not also disclose *"determining, for each of the other communication devices, a communication condition that a communication performance of one of the communication modes exceeds a communication performance of the other communication mode, for each other of the other communication devices."*

Hence, the noted features of claim 18 are distinction over Reynolds. The noted features also are distinction over Furtney as evidenced, e.g., by the Office Action. That is, the Office Action does not assert Furtney as disclosing the noted features.

Accordingly, withdrawal of the rejection is respectfully requested.

INDEPENDENT CLAIM 19

As an example, independent claim 19 recites (among other things) a feature of:

...

measuring a communication performance in the first communication mode, and a communication performance in the second communication mode under each of the communication conditions;

determining a communication condition in which a communication performance of the first communication mode exceeds a communication performance of the second communication mode ...

As will be explained below, at least these features of claim 15 are a distinction over Reynolds, and thus over its combination with Furtney.

Reynolds in column 6, lines 40-47 recites "hardware characterization test may be run." However, Reynolds does not disclose further details about the test. Reynolds does not disclose "determining a communication condition in which a communication performance of the first communication mode exceeds a communication performance of the second communication mode." Reynolds does not disclose "measuring a communication performance in the first communication mode, and a communication performance in the second communication mode under each of the communication conditions."

Reynolds in column 4, lines 18-21 recites "each particular operation requires communication among the nodes of the parallel processing system." However, Reynolds does not disclose "measuring a communication performance in the first communication mode, and a communication performance in the second communication mode under each of the communication conditions." Reynolds does not also disclose "determining a communication condition in which a communication performance of the first communication mode exceeds a communication performance of the second communication mode."

Reynolds in column 5, lines 11-46 does not disclose "measuring a communication performance in the first communication mode, and a communication performance in the second communication mode under each of the communication conditions." Reynolds in column 5, lines 11-46 does not also disclose "determining a communication condition in which a communication

performance of the first communication mode exceeds a communication performance of the second communication mode."

Hence, the noted features of claim 19 are distinction over Reynolds. The noted features also are distinction over Furtney as evidenced, e.g., by the Office Action. That is, the Office Action does not assert Furtney as disclosing the noted features.

Claims 20-22 depend from Claim 19. A basis for how Reynolds is deficient vis-à-vis Claims 12 has been noted above. The Office Action does not rely upon Furtney to compensate for these deficiencies. Hence, the noted feature of Claims 19 also is a distinction over Furtney.

Among other things, a prima facie case of obviousness must established that the asserted combination of references teaches or suggested each and every element of the claimed invention. In view of the distinction of Claim 19 noted above, at least one claimed element is not present in the asserted combination of references. Hence, the Office Action fails to establish a prima facie case of obviousness vis-à-vis Claims 19. Claims 20-22 ultimately depend from claim 19, and so at least similarly distinguish over the asserted combination of references.

Accordingly, withdrawal of the rejection is respectfully requested.

Conclusion

In light of the foregoing, withdrawal of the rejection of record and allowance of this application are earnestly solicited.

Should the Examiner believe that a telephone conference with the undersigned would assist in resolving any issues pertaining to the allowability of the above-identified application, please contact the undersigned at the telephone number listed below. Please grant any required extensions of time and charge any fees due in connection with this request to deposit account no. 19-3935.

Respectfully submitted,
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/Mehdi D. Sheikerz/

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